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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. :_____

In the

Supreme Court of the United States

ROBERT BANUSHI

Petitioner

v.

CITY OF NEW YORK and
ROBERT PANNISI

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

The Questions Presented Are:

1. Is it a departure from accepted and usual standards of judicial proceedings for the Court of Appeals to sanction a judgment of the District Court which decided that, an action alleging fraud commenced within *two years* of the act complained of as constituting the fraud, was statute barred within the purview of 42 U.S.C § 1983 and the Fourteenth Amendment which prescribe *a three year limitations period* or the New York Statute of Limitations which provides a *six year limitation period* for actions based on fraud? If so, does it call for the exercise of the supervisory powers of the Supreme Court?

2. What signal does such a blatant and egregious departure from accepted standards of judicial proceedings send to the public when the effect of the decision in question is to bar an action by a private citizen and deny him the right to seek redress against the fraud and perjury committed by a police officer while acting under the cover of government authority and color of state law.

3. Whether applying the correct principles, it was a proper exercise of judicial power to hold that Petitioner failed to state a case in his complaint before the District Court which alleged inter alia, fraud against Police

Officer Robert Pannisi in that said Police Officer voided the police report of the incident and perjured himself when he testified falsely in court at a civil trial in which he was called as a witness, by petitioner's assailants that Petitioner sustained his injuries in a drunken fall on a public street, notwithstanding evidence of the ambulance report corroborated by other evidence testimony including testimony of the party calling him as a witness, that the injury was sustained in an assault.

LIST OF PARTIES

Petitioner Robert Banushi was the plaintiff in the District Court action and he was Appellant in the appeal to the Second Circuit Court of appeals. Respondent City of New York was named a defendant in the District Court action and also an Appellee in the appeal to the Second Circuit Court of Appeals. Respondent Robert Pannisi, (NYPD Police Officer, No. 16675) was a defendant in the District Court action and he was also an Appellee in the appeal to the Second Circuit Court of Appeals. There are no other parties to this action

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In the Supreme Court of the United States

No.

ROBERT BANUSHI
Petitioner

v.

CITY OF NEW YORK and
ROBERT PANNISI
Respondents

PETITION FOR A WRIT OF CERTIORARI

Petitioner Robert Banushi respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

STATEMENT OF THE BASIS FOR THE JURISDICTION

i).The judgment or order of the Court of Appeal in which the clerk dismissed Petitioner's appeal, upon the Petitioner making a motion for leave to proceed pro se, sought to be reviewed herein, is dated March 09, 2007. Said decision is unreported.

ii).The decision of the Court of Appeal on Petitioner's motion for reconsideration of the judgment dismissing his appeal dated December 10, 2007. This decision is also unreported.

iii). The memorandum of opinion and order of the District Court which dismissed Petitioner's case after hearing a motion for summary judgment upon the ground that the causes of action alleged in the complaint were inter alia, time barred is dated September 28, 2006. That decision is also unreported.

iii). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS

42 U.S.C § 1983.
Fourteenth Amendment U.S. Const.

STATEMENT OF THE CASE

Respondent Police Officer Robert Pannisi, in the course of his duties as a New York City Police officer responded to a 911 call on April 11, 1995 at 7918 5th Avenue in Bayridge, Brooklyn, New York and found Petitioner assaulted and beaten up in a pool of his own blood, called an ambulance and escorted the ambulance which took the Petitioner to the hospital[1]. Respondent Officer Pannisi generated a complaint No. 2971 regarding the incident. Petitioner suffered in addition to other injuries, a "fracture of the lateral malleolus of the left ankle with posterolateral displacement of fracture fragment and subluxation of the ankle mortise[2]" Petitioner's fracture was surgically repaired[3].

Petitioner commenced a civil action against his assailants in the Supreme Court of the State of New York.

On March 8, 2002, respondent officer Robert Pannisi, was called as a defense witness in said civil action and testifying for Petitioner's assailants, respondent officer Pannisi, perjuring himself, falsely stated that petitioner sustained his injuries from a drunken fall on the street[4].

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[1] See ambulance report Page 31a -32a appendix

[2] See X-ray report Appendix Page 38a

[3] See operative report Appendix Page 42a-44a

[4] See Appendix pages52a-58a particularly page 57a.

It also appeared that sometime after the incident, respondent officer Pannisi, voided the police incident report which he had generated on the date of the assault[5].

During the said civil trial, the jury deliberating on the case sent a jury note[6] to the court requesting to see the police report of the incident. This could not be provided to the jury because it had been destroyed by respondent, Officer Pannisi. The jury found against Petitioner.

Petitioner thereupon commenced action in the District Court[7] and alleged Fraud inter alia, against Officer Pannisi in that, he acted unlawfully and testified falsely as aforesaid, with a view to a covering up for petitioner's assailants and to aid them in their defense against petitioner's civil action against them.

In a deposition testimony, Jimmy Lambrakos, one of plaintiff's assailants, contradicting respondent officer Pannisi, admitted that Petitioner was assaulted in a fight for which Officer Pannisi and

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[5] See Complaint made by petitioner regarding the voided police report Appendix pages 68a-69a; Letter of acknowledgment of report by Civilian Complaints Review Board Appendix pages 70a-71a; Complaint Report pages 72a -73a.

[6] See Jury Note Appendix page 67a

[7] See Appendix pages 17a -29a particularly paragraph 52 of the complaint at page 27a where petitioner specifically alleged that, "Defendant Robert Pannisi misrepresented the fact that there was an incident between the plaintiff and his assailants, and the fact that plaintiff had been injured by his assailants".

other police officers responded on the said date in 1995[8]. Another eye-witness also contradicting officer Pannisi stated that he witnessed the assault and called the police after he realized that Petitioner had been rendered unconscious in the assault[9].

Petitioner duly and timely appealed the decision of the District Court and made a motion to the Second Circuit Court of Appeals for appointment of counsel, to expedite his appeal and to supplement the record on appeal. In response to said motion, petitioner received a decision from the clerk not only denying his motion but his entire appeal because according to the clerk, it lacked an arguable basis in fact or in law[10].

Petitioner's motion for reconsideration[11] was not opposed by respondents and he filed a motion for a default decision which was equally not opposed, but all were denied.[12]

The applicable limitations period to petitioner's action is found in *42 U.S.C § 1983* and the Fourteenth Amendment which prescribe *a three year limitations period*, or the New York Statute of Limitations which provides a *six year limitation*

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[8] See Appendix pages 45a-51a particularly 48a.

[9] See in court testimony of George Angelis Appendix pages 59a-64a.

[10] See Appendix pages 92a -93a.

[11] See Appendix pages 97a – 105a.

[12] See Appendix page 108a

period for actions based on fraud *NY CPLR §213(8),* computed from the time of discovery the fraud, or when one with reasonable diligence could have discovered it.

REASONS FOR GRANTING THE WRIT

Petitioner asserts that the District Court failed to give adequate consideration to the totality of his case and the Court of Appeals without even examining the records, hastily sanctioned the decision of the District Court.

The facts of the case clearly evinces fraud as alleged, on the part of the police officer respondent, Robert Pannisi and the fraud was committed not necessarily simply by his destruction of the police report some time after April 11, 1995, alone, but by his proactively providing false testimony to the court under oath on March 8, 2002, at a trial in which he was called as a witness.

The testimony of the Police Officer Robert Pannisi that appellant sustained an injury from a fall was clearly false. Jimmy Lambrakos admitted that there was a fight between them and appellant. The disappearance of the police report is thus, not a coincidence. It was only part, albeit, a major part of a chain of events calculated to defraud the Petitioner and drive him away from the seat of justice. The chain of events culminated in the false testimony provided by the police office in court. This,

respectfully, completed the fraud, and therefore, accrual of the cause of action.

The knowledge of the fraud, it is submitted, can only be imputed to appellant commencing from the date it was completed - the date of the testimony, March 8, 2002.

DISCUSSION

The district court's decision which the Court of Appeal sanctioned, overlooked basic principle in treating a summary judgment motions that all inferences to be drawn from evidence must be drawn in favor of the non moving party and all disputed factual issues must be resolved in favor of the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

Petitioner's federal claims brought under the Fourteenth Amendment and Section 1983 are governed by a limitations period of three years, which petitioner submits, commenced from the date false and perjured testimony of Officer Pannisi and under state law, the applicable statute of limitation *NY CPLR §213(8)* provides a six year statute of limitation to be computed from the time the plaintiff or the person under whom he claims discovered the fraud, or could with reasonable diligence have discovered it.

Again, in its haste to shield respondent, the District Court impermissively resolved conflicting assertions of the parties and drew inferences

therefrom in favor of respondents rather than Petitioner the non-moving party in the summary judgment proceedings. *Anderson v. Liberty Lobby Inc;* 477 US

The District Court in its error above, misled itself into sustaining the summary judgment motion and held in effect, that taking the record as a whole, a rational trier of fact could not have found that a genuine issue(s) of material facts exist for trial. *Matsushita Elec Ind Co. V. Zenith Radio Corp* 475 US 574; 106 S. Ct. 1348).

The effect of the hasty decision of the Second Circuit Court of Appeals in this case is to sanction a cover provided by the District Court for the fraud committed by a police officer using the color of authority, and as such, permitted the judicial process to be used as an engine of fraud thus, the Court of Appeals allowing itself depart so far from accepted and usual course of judicial proceedings and such a departure does call for an exercise of the Supreme Courts supervisory power.

Denial of a right to seek redress in court by private citizens against the wrongs committed by public officers, undoubtedly is an inalienable right guaranteed under the constitution.

CONCLUSION

Appellant respectfully prays the Supreme Court to grant certiorari in this matter because, the effect of the decision of the Court of Appeal in

groundlessly, summarily upholding the erroneous the decision of district court is to affirm the denial of the right to seek judicial redress by private persons for wrongs committed to private persons by public officers however highly placed.

A private citizen undoubtedly has an inalienable right to seek redress in courts for wrongs committed against him and obtain relief for loss and damages he may have suffered thereby. This right is guaranteed under the constitution of the United States.

The public policy implication of the decision in this case is that the courts could be used as an engine of fraud by public officers to abuse their offices and rest assured that any action commenced against them to redress that wrong would somehow be dismissed at the instance of the public officer notwithstanding the absence of any colorable basis therefor.

Dated: Brooklyn, New York.
February 12, 2008.

Respectfully Submitted,

Robert Banushi, (Pro Se)
46 Parrott Place,
Brooklyn, New York 11228
(718) 238-4320

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT BANUSHI,

Plaintiff,

-against-

THE CITY OF NEW YORK,
NEW YORK POLICE DEPT.,
POLICE OFFICER ROBERT PANNISI
(NYPD) SHIELD NO: 16675,
",JANE AND ,JOHN DOE" UNKNOWN
NYPD OFFICERS,

Defendants.

SUMMONS IN CIVIL CASE
cv-04-2206

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY, Da'Tekena Barango-Tariah, Esq., 255 Livingston Street, 4th Floor, Brooklyn, New York 11217, an Answer to the Complaint which is hereby served upon you, with 20 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complainant. You must also

file your Answer with the Clerk of this Court within a reasonable period of time after service.

Clerk ROBERT C. HEINEMANN

MAY 26 2004
Date

(By) Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT BANUSHI,

Plaintiff,

-against-

THE CITY OF NEW YORK,
NEW YORK POLICE DEPT.,
POLICE OFFICER ROBERT PANNISI
(NYPD) SHIELD NO: 16675,
"JANE AND JOHN DOE" UNKNOWN
NYPD OFFICERS,

Defendants.

Docket No. cv-04-2206
COMPLAINT

JURY TRIAL DEMANDED.

INTRODUCTION STATEMENT

1. This is a civil action seeking to redress violations of plaintiff s rights under the constitution and laws of the United States and the state of New York for defendants' conduct in denying plaintiff adequate protection of plaintiffs rights on the basis of plaintiffs nationality.

JURISDICTION

2. This action is brought pursuant to 42 U.S.C.A. sections 1983 and 1988 and the Equal protection

clause to the United States Constitution. Plaintiff also invokes this Court's supplemental jurisdiction to assert claims under Article I, Section 12 of the New York State Constitution, Section 8 of the New York Civil Rights Law and the State law claims of prima facie tort and fraud.

3. This Court has jurisdiction pursuant to 28 V.S.C.A. Sections 1331 and 1343, since this claim arises under the Constitution and laws of the United States and since defendants acted under color of state law.

VENUE

4. Venue lies in this District pursuant to 28 U.S.C.A. section 1391(b) (2) since the events giving rise to the claim occurred in the Eastern District.

PARTIES

5. Plaintiff Robert Banushi is a resident of Brooklyn, New York. At the time of the events alleged, he resided in the city of Brooklyn in Kings County in the State of New York.

6. Defendant Police Officers are, and at all times relevant to this action were officers of the City of New York Police Department, and acted under color of state law. Said officers are being sued in both their individual and official capacities.

7. Defendant is a police officer for the City of New York Police Department, and acted under color of

state law. She is being sued in both her individual and official capacity.

8. Defendant Robert Pannisi is a police officer for the City of New York Police Department, and acted under color of state law. She is being sued in both her individual and official capacity.

9. Defendant Jane Doe is an unknown police officer for the City of New York Police Department, and acted under color of state law. She is being sued in both her individual and official capacity.

10. Defendant John Doe is an unknown police officer for the City of New York Police Department, and acted under color of state law. He is being sued in both her individual and official capacity.

11. The Defendant, The City of New York is a municipality in the State of New York, and employs the Defendant Police Officers.

FACTUAL ALLEGATIONS

12. On or about March 4, 2004, plaintiff discovered that defendant Robert Pannisi had fraudulently declined to record a police report after defendant Robert Pannisi had arrived at the scene of an incident, on April 11, 1995, in which the plaintiffs left angle was broken by persons who had attacked the plaintiff.

13. When defendant Robert Pannisi and some other officers had arrived on the scene, defendant Robert Pannisi had prepared a police report of the incident.

14. On November 19, 2001, when the plaintiff needed the police report when the plaintiff had made a claim against his assailants, the New York Police Department could not provide plaintiff with a police report of the incident.

15. On November 19, 2001, the New York Police Department could not provide plaintiff with a police report of the incident.

16. On November 19, 2001, the plaintiff was informed by the Internal Affairs Command Center that the police report that had been prepared by defendant Robert Pannisi was not in the system.

17. Plaintiff was further informed by the Internal Affairs Command Center that the police report number reporting the incident in which plaintiffs left angle was broken had been reused to report another incident.

18. Neither defendant Robert Pannisi nor any of the other police officers arrested nor booked the persons that had assaulted the plaintiff.

19. Defendant Robert Pannisi fraudulently voided the police report that he had prepared reporting the incident.

20. At the time of the incident, the plaintiff, an Albanian, could not speak or understand any English.

21. On or about February 7, 1996, Plaintiff sued his assailants in the Supreme Court, Kings County in a personal injury action (Index No. 4311-1996).

22. On March 13, 2002, the jury in the action requested to Sec the police report that defendant Robert Pannisi had prepared.

23. Plaintiff could not produce the police report as it had been voided, or it did not exist, and the jury found for the defendants who had broken the plaintiff's angle.

24. A police report that the Internal Affairs Command Center had ordered to be produced, that had been produced on December 12, 2001, by a police officer who had not arrived at the scene of the incident did not suffice.

25. As a result of the breaking of plaintiffs left angle, plaintiff has been under a "disability".

AS AND FOR A FIRST CAUSE OF ACTION

26. Plaintiff repeats and realleges the allegations contained in paragraphs "1" through "25" as if more fully set forth herein.

27. Defendants The City of New York and New York Police Dept. through their agents violated plaintiffs

rights under the equal protection clause and 42 U.S.C.A. section 1983 by failing to provide plaintiff with police protection after a special relationship had been created.

AS AND FOR A SECOND CAUSE OF ACTION

28. Plaintiff repeats and realleges the allegations contained in paragraphs "1" through "25" as if more fully set forth herein.

29. Defendants The City of New York and New York Police Dept. through their agents violated plaintiffs rights under the equal protection clause and 42 U.S.C.A. Section 1983 by fraudulently declining to provide plaintiff with a police report.

AS AND FOR A THIRD CAUSE OF ACTION

30. Plaintiff repeats and alleges the allegations contained in paragraphs "1" through "25" as if more fully set forth herein.

31. Defendants Robert Pannisi, and defendants The City of New York and New York Police Dept. through their agents violated plaintiff's rights under the equal protection clause and 42 U.S.C.A. section 1983 by conspiring to deny plaintiff police protection after a special relationship had been created.

AS AND FOR A FOURTH CAUSE OF ACTION

32. Plaintiff repeats and realleges the allegations contained in paragraphs "1" through "25" as if more fully set forth herein.

33. Defendants Robert Pannisi, and defendants The City of New York and New York Police Dept. through their agents violated plaintiff's rights under the equal protection clause and 42 U.S.C.A. section1983 by conspiring to fraudulently declining to provide plaintiff with a police report

AS AND FOR A FIFTH CAUSE OF ACTION

34. Plaintiff repeats and realleges the allegations contained in paragraphs "1" through "25" as if more fully set forth herein.

35. Defendants The City of New York and New York Police Dept. through their agents violated plaintiff's rights under the Constitution and laws of the State of New York by failing to provide plaintiff with police protection after a special relationship had been created.

AS AND FOR A SIXTH CAUSE OF ACTION

36. Plaintiff repeats and realleges the allegations contained in paragraphs "1" through "25" as if more fully set forth herein.

37. Defendants The City of New York and New York Police Dept. through their agents violated plaintiff's rights under the Constitution laws of the State of

New York by fraudulently declining to provide plaintiff with a police report.

AS AND FOR AN SEVENTH CAUSE OF ACTION
(Prima Facie Tort)

38. Plaintiff repeats and realleges the allegations contained in paragraphs "1" through "25" as if more fully set forth herein.

39. Defendants intentional inflicted harm on plaintiff.

40. Plaintiff could not prove his personal injury case against his assailants due to the non existence of the police report that was prepared on the scene.

41. Defendants denied plaintiff police protection without excuse or justification.

42. Defendants' act or series of acts of denying plaintiff police protection would otherwise be lawful.

AS AND FOR AN EIGHT CAUSE OF ACTION
(Fraud)

43. Plaintiff repeats and realleges the allegations contained in paragraphs "1" through "25" as if more fully set forth herein.

44. Defendant Robert Pannisi misrepresented the fact that there was an incident between the plaintiff and his assailants, and the fact that plaintiff had been injured by his assailants.

45. By voiding the police report, and by not recording the incident, Defendant Robert Pannisi falsified the fact that there was an incident between the plaintiff and his assailants, and the fact that plaintiff had been injured by his assailants, making it seem like no incident ever occurred.

46. Defendant Robert Pannisi was scienter.

47. By Defendant Robert Pannisi acts, defendant Robert Pannisi deceived the plaintiff.

48. As a proximate cause of the acts and conduct of defendant Robert Pannisi, plaintiff was harmed.

WHEREFORE, Plaintiff demands judgment against defendants, jointly and severally:

a. Awarding plaintiff compensatory damages in an amount to be determined by the jury;

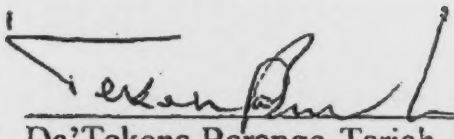
b. Awarding plaintiff punitive damages in an amount to be determined by the jury;

c. Awarding plaintiff reasonable attorneys' fees, costs and disbursements pursuant to 42 U.S.C.A. section 1988; and

d. Such other and further relief as may be just and proper.

Dated: Brooklyn, New York
May 25, 2004

Respectfully submitted,



Da'Tekena Barango-Tariah, Esq. (5592)
255 Livingston Street, 4th Floor
Brooklyn, New York 11217.
(718) 625 4200

UNITED STATES DISTRICT COURT
EASTERN DISTRICT

ROBERT BANUSHI,

Plaintiff,

-against-

CITY OF NEW YORK, et al.,

Defendants.

JUDGMENT

04-cv-2206 (cps)

A Memorandum and Order of Honorable Charles P. Sifton, United States District Judge, having been filed on March 21, 2005, granting the defendants' Rule 12 (c) motion in its entirety; ordering that plaintiff is granted leave to replead his claims against the City and Officer Pannisi within thirty days of the date Court's March 15, 2005 Memorandum and Order; and denying the defendants' Rule 11 motion; it is

ORDERED and ADJUDGED that the defendants' Rule 12 (c) motion is granted in its entirety; that plaintiff is granted leave to replead his claims against the City and Officer Pannisi within thirty days of the date of the Court's March 15, 2005 Memorandum and Order; and that defendants' Rule 11 motion is denied.

Dated: Brooklyn, New York
March 24, 2005

ROBERT C. HEINEMANN
Clerk of Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT BANUSHI,

Plaintiff,

-against-

THE CITY OF NEW YORK,
NEW YORK POLICE DEPT.,
POLICE OFFICER ROBERT PANNISI
(NYPD) SHIELD NO: 16675,
",JANE AND ,JOHN DOE" UNKNOWN
NYPD OFFICERS,

Defendants.

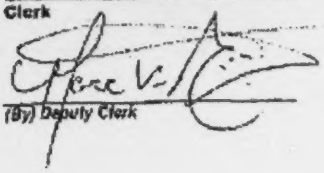
SUMMONS IN CIVIL CASE
cv-04-2206

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY, Da'Tekena Barango-Tariah, Esq., 25 Bond Street, 2nd Floor, Brooklyn, New York 11201, an Answer to the Complaint which is hereby served upon you, within 20 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complainant. You must

also file your Answer with the Clerk of this Court within a reasonable period of time after service.

ROBERT C. HEINEMANN

Clerk



(By) Deputy Clerk

APR 12 2005

Date

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT BANUSHI,

Plaintiff,

-against-

THE CITY OF NEW YORK,
NEW YORK POLICE DEPT.,
POLICE OFFICER ROBERT PANNISI
(NYPD) SHIELD NO: 16675,
"JANE AND JOHN DOE" UNKNOWN
NYPD OFFICERS,

Defendants.

Docket No. cv-05-1808
COMPLAINT
JURY TRIAL DEMANDED.

INTRODUCTION STATEMENT

1. This is a civil action seeking to redress violations of plaintiff s rights under the constitution and laws of the United States and the state of New York for defendants' conduct in denying plaintiff adequate protection of plaintiffs rights on the basis of plaintiffs nationality.

JURISDICTION

2. This action is brought pursuant to 42 U.S.C.A. sections 1983 and 1988 and the Equal protection clause to the United States Constitution.

Plaintiff also invokes this Court's supplemental jurisdiction to assert claims under Article I, Section 12 of the New York State Constitution, Section 8 of the New York Civil Rights Law and the State law claims of prima facie tort and fraud.

3. This Court has jurisdiction pursuant to 28 U.S.C.A. Sections 1331 and 1343, since this claim arises under the Constitution and laws of the United States and since defendants acted under color of state law.

VENUE

4. Venue lies in this District pursuant to 28 U.S.C.A. section 1391(b) (2) since the events giving rise to the claim occurred in the Eastern District.

PARTIES

5. Plaintiff Robert Banushi is a resident of Brooklyn, New York. At the time of the events alleged, he resided in the city of Brooklyn in Kings County in the State of New York.

6. Defendant Police Officers are, and at all times relevant to this action were officers of the City of New York Police Department, and acted under color of state law. Said officers are being sued in both their individual and official capacities.

7. Defendant Robert Pennisi is a police officer for the City of New York Police Department, and

acted under color of state law. She is being sued in both her individual and official capacity.

8. Defendant Jane Doe is an unknown police officer for the City of New York Police Department, and acted under color of state law. She is being sued in both her individual and official capacity.

9. Defendant John Doe is an unknown police officer for the City of New York Police Department, and acted under color of state law. He is being sued in both her individual and official capacity.

10. The Defendant, The City of New York is a municipality in the State of New York, and employs and/or employed the Defendant Police Officers through its police department, namely the New York City Police Department, and the actions and/or conduct of the officers complained of herein were done as part of the custom, practice, usage, regulation and / or direction of the City of New York.

FACTUAL ALLEGATIONS

11. On or about March 4, 2004, plaintiff discovered that defendant Robert Pannisi had fraudulently declined to record a police report after defendant Robert Pannisi had arrived at the scene of an incident, on April 11, 1995, in which the plaintiffs left ankle was broken by persons who had attacked the plaintiff.

12. On March 24, 2004, plaintiff filed a Notice of Claim with The City of New Yolk.

13. When defendant Robert Pannisi and some other officers had arrived on the scene, defendant Robert Pannisi had prepared a police report of the incident.

14. On November 19, 2001, when the plaintiff needed the police report when the plaintiff had made a claim against his assailants, the New York Police Department could not provide plaintiff with a police report of the incident.

15. On November 19, 2001, the New York Police Department could not provide plaintiff with a police report of the incident.

16. On November 19, 2001, the plaintiff was informed by the Internal Affairs Command Center that the police report that had been prepared by defendant Robert Pannisi was not in the system.

17. Plaintiff was further informed by the Internal Affairs Command Center that the police report number reporting the incident in which plaintiffs left angle was broken had been reused to report another incident.

18. On December 12, 2001, the Internal Affairs Command Center of the New York Police Department provided plaintiff with a Verification of Crime/Lost Property report dated December 12, 2001, of the April 11, 1995 incident, in place of police report.

19. Neither defendant Robert Pannisi nor any of the other police officers arrested nor booked the persons that had assaulted the plaintiff.

20. Defendant Robert Pannisi fraudulently voided the police report that he had prepared reporting the incident.

21. At the time of the incident, the plaintiff, an Albanian, could not speak or understand any English.

21. On or about February 7, 1996, Plaintiff sued his assailants in the Supreme Court, Kings County in a personal injury action (Index No. 4311-1996).

22. On or about February 7, 1996, Plaintiff sued his assailants in the Supreme Court, Kings County in a personal injury action (Index No. 4311-1996).

23. On March 13, 2002, the jury in the action requested to Sec the police report that defendant Robert Pannisi had prepared.

24. Plaintiff could not produce the police report as it had been voided, or it did not exist, and the jury found for the defendants who had broken the plaintiff's angle.

25. The Verification of Crime/Lost Property report, that the Internal Affairs Command Center had ordered to be produced, that had been produced

on December 12, 2001, by a police officer who had not arrived at the scene of the incident did not suffice.

26. As a result of the breaking of plaintiff's left ankle, plaintiff has been under a "disability".

27. On May 26, 2004, plaintiff filed a complaint in this Court, the United States District Court, Eastern District of New York, pursuant to 42 U.S.C.A. Sections 1983 and 1988 and the Equal protection clause of the Fourteenth Amendment to the United States Constitution against the herein defendants and the New York Police Department.

28. On March 15, 2005, upon the defendants' motion to dismiss with sanctions, and plaintiffs opposition, this Court granted defendants' motion in its entirety, granted plaintiff leave to replead his claims against the herein defendants within thirty days of the Order, and denied defendants' motion for sanctions.

29. At all times relevant to this complaint, defendant Robert Pannisi, as a police officer of the City of New York, was acting under the directions and control of defendant The City of New York, and was acting pursuant to the official policy, practice, or custom of the City of New York. The allegations in this paragraph are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

30. Acting under color of law and pursuant to official policy, practice, or custom, defendant The City of New York intentionally, knowingly, negligently and recklessly failed to instruct, supervise, control, and discipline, on a continuing basis, defendant Robert Pannisi in his duties, to refrain from unlawfully and maliciously voiding police report, and failing to report incidents after arriving at a scene. The allegations in this paragraph are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

31. Acting under color of law and pursuant to official policy, practice, or custom, defendant The City of New York intentionally, knowingly, negligently and recklessly failed to instruct, train, and supervise defendant Robert Pannisi on a continuing basis. The allegations in this paragraph are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

32. Defendant The City of New York had knowledge, or, had they diligently exercised their duties to instruct, supervise, control, and discipline on a continuing basis, should have had knowledge that the wrongs which were done, as heretofore alleged, were about to be committed. Defendant The City of New York had power to prevent or aid in preventing the commission of said wrongs, could have done so by reasonable diligence, and intentionally, "knowingly, negligently or recklessly failed or refused to do so. The allegations in this

paragraph are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

33. Defendant City of New York, directly or indirectly, under color of law, approved or ratified the unlawful, deliberate, malicious, reckless, and wanton conduct of defendant Robert Pannisi as heretofore described. The allegations in this paragraph are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

AS AND FOR A FIRST CAUSE OF ACTION

34. Plaintiff repeats and realleges the allegations contained in paragraphs "1" through "33" as if more fully set forth herein.

35. Defendant The City of New York through their agents violated plaintiff's rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C.A. section 1983 by failing to provide plaintiff with police protection after a special relationship had been created.

AS AND FOR A SECOND CAUSE OF ACTION

36. Plaintiff repeats and realleges the allegations contained in paragraphs "1 " through "33" as if more fully set forth herein.

37. Defendant The City of New York through their agents violated plaintiffs rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C.A. Section 1983 by fraudulently declining to provide plaintiff with a police report.

AS AND FOR A THIRD CAUSE OF ACTION

38. Plaintiff repeats and realleges the allegations contained in paragraphs "1" through "33" as if more fully set forth herein.

39. Defendant The City of New York through their agents violated plaintiff's rights under the Constitution and laws of the State of New York by failing to provide plaintiff with police protection after a special relationship had been created.

40. Defendant The City of New York through the its police officers assumed an affirmative duty to act on behalf of the plaintiff by defendant Robert Pannisi and some other officers arriving on the scene of the incident after a call was made to the New City Police Department, and defendant Robert Puniness preparing a police report of the incident in which the plaintiff's ankle was broken by persons who had attacked the plaintiff.

41. Defendant Robert Pannisi and the other police officers who had arrived at the scene knew that a failure to record a police report of the incident would lead to harm to the plaintiff, the victim, and the injured party in the incident.

42. Defendant Robert Pannisi had direct contact with the plaintiff by asking the plaintiff what had happened, and by aiding the plaintiff into an ambulance that had also arrived at the scene.

43. Plaintiff relied on the fact that defendant Robert Pannisi and some other officers arrived on the scene of the incident after a call was made to the New City Police Department, and that defendant Robert Pannisi had prepared a police report of the incident in which the plaintiff s ankle was broken by persons who had attacked the plaintiff.

AS AND FOR AN FOURTH CAUSE OF ACTION
(Prima Facie Tort)

44. Plaintiff repeats and realleges the allegations contained in paragraphs "1" through "33" as if more fully set forth herein.

45. Defendants intentional inflicted harm on plaintiff.

46. Plaintiff could not prove his personal injury case against his assailants due to the non-existence of the police report that was prepared on the scene.

47. The police report was non-existent because defendant Robert Pannisi had voided the police report without making any record of it.

48. Defendants denied plaintiff the availability of a police report that should have been prepared on the scene of the incident without excuse or justification.

49. Defendant Robert Panic's conduct of voiding the police report was done with the sole intent of harming the plaintiff.

50. Defendant Robert Pannisi acted with disinterested malevolence.

51. Defendants' act or series of acts of denying plaintiff of a police report would otherwise be lawful.

AS AND FOR AN FIFTH CAUSE OF ACTION
(Fraud)

52. Plaintiff repeats and realleges the allegations contained in paragraphs "1" through "33" as if more fully set forth herein.

53. Defendant Robert Pannisi misrepresented the fact that there was an incident between the plaintiff and his assailants, and the fact that plaintiff had been injured by his assailants.

54. By voiding the police report, and by not recording the incident, defendant Robert Pannisi falsified the fact that there was an incident between the plaintiff and his assailants, and the fact that plaintiff had been injured by his assailants, making it seem like no incident ever occurred.

55. Defendant Robert Pannisi was scienter.

56. Plaintiff relied on the fact that when the police officers had arrived at the scene of the incident, defendant Robert Pannisi had prepared a police report of the incident.

57. By defendant Robert Pannisi acts, defendant Robert Pannisi deceived the plaintiff.

58. As a proximate cause of the acts and conduct of defendant Robert Pannisi, plaintiff was harmed.

59. As a direct and proximate result of the acts the defendant as set forth herein, plaintiff suffered severe mental anguish in connection with the deprivation of his constitutional rights guaranteed by the Fourteenth Amendments to the Constitution of the United States and Protected by 42 U.S.C. Section 1983.

60. The acts of the defendants as set forth above were wanton, malicious, and oppressive, thus entitling plaintiff to an award of punitive and compensatory damages against each of them, individually and severally.

WHEREFORE, Plaintiff demands judgment against defendants, jointly and severally:

a. Awarding plaintiff compensatory damages in an amount to be determined by the jury;

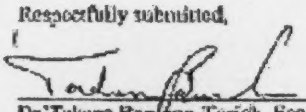
b. Awarding plaintiff punitive damages in an amount to be determined by the jury;

c. Awarding plaintiff reasonable attorneys' fees, costs and disbursements pursuant to 42 V.S.C.A. section 1988; and

d. Such other and further relief as may be just and proper.

Dated: Brooklyn, New York
April 11, 2005

Respectfully submitted,



Da'Tekena Barango-Tariah, Esq. (5592)
25 Bond Street, 2nd Floor
Brooklyn, New York 11201
(718) 625 4200

LMC
A Member of
The Mount Sinai Health System

Lutheran Medical Center
150 55th Street
Brooklyn, New York 11220-2574
718/630-7000

CERTIFICATION OF MEDICAL RECORD

DATE: November 21, 2001
PATIENT: Robert Benushi
CHART: 657231

I, the Director of Health Information Management of Lutheran Medical Center, hereby certify that the record attached is in my custody and is to the best of my knowledge the full and complete record of the condition, act, transaction, occurrence of event concerning the above-named patient.

I further certify that this record was made in the regular course of business, that it is in the regular course of business to make such record, and that such record was made at the time of the condition, act, transaction, occurrence or event, or within a reasonable time thereafter.

Prepared by:

Prepared by:

Correspondence Section

Director

Winner of the First American Hospital Association National Award for Excellence in Community Service The Foster G. McGaw Prize 1986-1987

A Major Teaching Affiliate of the State University of New York Health Science Center at Brooklyn and Clinical Campus for Primary Care Education

Emergency Medical Service – Ambulance Call Report
No. 2-2531101

Call Data:
Date: 4/11/95 Dept. 32K3 last gross area 3266
Message ID# 2030
Call Location: 7818 5th Avenue, Apt: 10, Cross Street: 5th Avenue,
Type of Call: Assault
Patient's Name: Banushi Robert, Sex: M Age: 35 yrs, D.O.B._5/5/1959. Address: 507 77th Street Brooklyn NY 11209
Prior Treatment at Scene: None Next of Kin (Wife) Vjollca Telephone: 718-238-4320, Prior C.P.R at Scene: None
P.O Badge: 16675 Pct: 68

Chief Complaint: "I was Assaulted..." / Par Utica

Presenting Problem

Medical: left ankle; AOB 1 ½ pint unit

Trauma: Trauma Blunt
Mechanism of Injury: Unarmed Assault

Comments:
History: PT Denies
Medications: PT Denies @ time
Allergies: PT Denies @ time
Presumptive Diagnosis: Blunt Trauma, alert and oriented
Patient Condition: Major

Comments: P/T 35 year old Male awake and responsive alert and oriented, sitting and states he was assaulted by 4 males denies weapons PT denies loss of consciousness. States he was kicked and punched. Physical Examination: Lung sounds, clear, clear pupils 'constricted'; Laceration to forehead.

Vital Signs
Time:17:50, B.P: 130/90, Pulse:120 Pre Sp20, GCS (Glasgow Coma Scale) :15,
Time: 17.55 B.P, 150/92, Pulse120, Pre sp Skin Moisture: Normal Skin Color.
Pupils constricted:, Mental Status: Alert oriented

BLS Treatment
Assist: ventilation: Control Bleeding,
Immobilization: ??
Other: PFA v/s i/s de-ice pak,

ALS Treatment:
Time 3B
OC
KS

Treatment Response:
Positive rear cranial; Positive for two hematomas without cerebral spinal fluid. Ankle deformities; positive for cap refill; negative for syanosis.

Transport:
No. of Patients: 01.
Patient Id 050-82-3830

sgd
Hospital Receiving Agent

Lutheran Medical Center
Brooklyn, New York
Emergency Department
Triage Note
Patient Name: Banushi, Robert, Age: 35 years old
Date: 04/11/95, Time 6:20 pm,
Triage Category: C
Triage Note: Alert responsive male pt brought in by EMS via station with history of assault few hours ago. Denies loss of consciousness; hematoma on forehead noted; laceration frontal head approx 12 inches long; with Left leg splint; Left ankle swollen observed; patient alert and oriented. Uncooperative.

PMH: Denies.
LMP: N/A
MEDICATIONS: None
ALLERGIES: None known.
IMMUNIZATION: Can't recall

RN SIGNATURE
MA. Lowera S. Dragalen

Vital Signs
TIME: 6:30pm
BP: 140/90
PULSE: 120
RESP: 22
TEMP: 98 F
O2 SAT: 9720

LUTHERAN MEDICAL CENTER
E.R 743878
Physician Notes: 7:30 pm , 4/11/95
35 year old male assaulted came in ER via EMS Significant abrasions.... On the forehead .....the right knee and swelling and deformity in the left ankle BP140/90, Pulse 120, Respiration 20, Temprature 97.8 auto saturation 97%; Head and Trunk: abrasions on the forehead and forearm. Neurological Exam: pupils equal and reactive. Chest clear, abdomen soft, upper extremities, unremarkable; lower extremities: contusions on the right knee, swelling and deformity left ankle; good pulses.
Family Doctor: 9999 NO FAMILY DOCTOR

Test: X-ray left ankle fracture; Right Knee; fracture left fibula
Consultations: Surgery.
Dr. Jinselon notified 8.20 p.m.
Registration date and time: 4/11/95 18:32,
Patient Name: Banushi, Robert, Age:35,
Date and Birth: 05/05/59 Sex: Male,
Account No. 2-20451-9, Medical Record No: 657231,
Patient Address: 507 77th Street,
Patient City, State and Zip Code: Brooklyn, NY 11209,
Patient Employer: PT. Speaks only polish,
Patient Home Phone: 718-238-4320,
Patient Social Security-000-00-0000,
Guarantor Name: Banushe, Robert,
Guarantor Address: 507 77 Street,
Guarantor Relation to Patient: Patient,
Guarantor Occupation: None,

Guarantors Soc. Sec No: 000-00-000,
Guarantor Employer: Speaks only polish,
Insurance Carried: Self Pay,
Benefit Code: S,
Name of Insurer: Banushe, Banushe,
If Emergency Notify: Banushe, Yorka,
Relationship: Spouse,
Address: 507 77 Street, City, State, Zip Code:
Brooklyn , NY, 11209
Radiology Authenticated Report X-ray
Lutheran Medical Center, Brooklyn, NY 11220

Patient: Banushe, Robert
Location: ERSex: M Age: 35 Y
Address: 507 77 Street Phone:(718) 238-4320
City: Brooklyn State: NY Zip: 11209
MR#: 657231 Acct#: 2-20451-9

Order#: 0002 Performed Dt/Tm: 04/11/95 08:00PM
Order Status: Exam taken Proc Cd: 3033
Procedure Description: Ankle 73610
Problem Prompting Exam: R/O FX

Side: LT
Ordering Dr: 5053 Jazrawi/Atallah
Attending Dr: Consulting Dr:
Referring Dr: 9999 No family doctor

Left Ankle: 04/11/95 621ER

There is Fracture of the Lateral Malleolus of the left ankle with posterolateral displacement of fracture fragment and subluxation of the ankle mortise.

Dictated 4/12/95 AM
TR/MEH
4/13

Entored By: MEH Dept:EX Transcribed
Dt/Tm:4/13/95 03:30 PM
Reporting Dr: 8003 Ratnarathorn, T.

End Of Report

Radiology Authenticated Report ER Xray
Lutheran Medical Center
Brooklyn NY
11220

Patient: Banushe, Robert
Location: ER Sex:M Age:35 Y
Address: 507 77 Street Phone (718) 238-4320
City: Brooklyn State: NY Zip:11209
MR#: 657231 Acct#: 2-20451-9
Order#: 0003 Performed Dt/Tm: 4/11/95 08:00am
Order Status: Exam taken
Proc Cd: 3035 Proc Description: Knee
73562
Problem Prompting Exam: R/O FX
Side: RT
Ordering Dr: 5053 Jazrawi/ Atallah
Attending Dr: Consulting Dr:
Referring Dr: 9999 No family doctor
Right Knee: 4/11/95 621 ER

There is no fracture or dislocation, Soft tissues are unremarkable. There is no evidence of bone or joint abnormality.

Impression: No fracture or dislocation.

Dictated 4/12/95
TR/MEH
4/13
Entered By: MEH Dept: EX Transcribed
Dt/Tm:4/13/95 3:32pm
Reporting Dr: 8003 Ratnarathorn, T.
***End Of Report**

NURSES ASSESSMENT/TREATMENT NOTES

9.00 p.m. After Patient returned from X-ray he climbed off stretcher and went to bathroom. Not available for treatment A.W.O.L. Dr. Janwori notified. Called patients home, family stated he probably is out ..... Told relatives he has fracture and should return to E.R.

Sgd.

Nurses Signature & Title
(Sgd) RN

RADIOLOGY
AUTHENTICATED REPORT
ERXRAY

LUTHERAN MEDICAL CENTER
BROOKLYN 11202
04/13/95
03:30 PM

Patient: BANUSHE, ROBERT
Location: ER Sex: M Age: 35Y
Address: 507 77 STREET Phone: (718) 238-4320
City: BROOKLYN State: NY Zip: 11209
MR# 657231 ACCT#: 2-204651-0 DISCHARGE
DATE: / /
Order #: 0002 Performed Dt/Tm: 04/11/95 08:00PM
Order Status: EXAM TAKEN 73610
Proc Cd: 3033 Proc Description: Ankle
Side: Lt
Ordering Dr: 5053 Jazrawi/Atallah
Attending Dr: Consulting Dr:
Referring Dr.: 9999 No Family Doctor

Left Ankle: 4/11/95 621 ER

THERE IS A FRACTURE OF THE LATERAL MALLEOLUS OF THE LEFT ANKLE WITH POSTEROLATERAL DISPLACEMENT OF FRACTURE FRAGMENT AND SUBLUXATION OF THE ANKLE.

MORTISE..
DICTATED: 4/12/95AM
TR/MEH

4/13
Entered By: MEH Dept: Ex
Transcribed Dt/Tm: 04/13/95 03:30PM
Reporting Dr: 8003 RATNARATHORN, T.
Authenticating Dr:
Taskin Ratnarathorn MD
Signed Dt/Tm: 04/13/95 03:30PM

RADIOLOGY
AUTHENTICATED REPORT
ERXRAY

LUTHERAN MEDICAL CENTER
BROOKLYN 11202
04/13/95
03:30 PM

Patient: BANUSHE, ROBERT
Location: ER Sex: M Age: 35Y
Address: 507 77 STREET Phone: (718) 238-4320
City: BROOKLYN State: NY Zip: 11209
MR# 657231 ACCT#: 2-204651-0 DISCHARGE
DATE: / /
Order #: 0003 Performed Dt/Tm: 04/11/95 08:00AM
Order Status: EXAM TAKEN 73562
Proc Cd: 3035 Proc Description: Knee
Problem Prompting Exam: R/O FX
Side: Rt
Ordering Dr: 5053 Jazrawi/Atallah
Attending Dr: Consulting Dr:
Referring Dr.: 9999 No Family Doctor

Right Knee: 4/11/95 621 ER

THERE IS NO FRACTURE OR DISLOCATION. SOFT TISSUES ARE UNREMARKABLE. THERE NO EVIDENCE OF BONE OR JOINT ABNORMALITY.

IMPRESSION: NO FRACTURE OR DISLOCATION.

DICTATED: 4/12/95AM
TR/MEH
4/13
Entered By: MEH Dept: Ex
Transcribed Dt/Tm: 04/13/95 03:32PM
Reporting Dr: 8003 RATNARATHORN, T.
Authenticating Dr:
Taskin Ratnarathorn MD
Signed Dt/Tm: 04/13/95 03:32PM

MAMONIDES MEDICAL CENTER –
MAIMONIDES HOSPITAL
OPERATIVE RECORD

Patient Name	Date:	Unit #:
BANUSHI, ROBERT	4/13/95	30661103

SURGEON: ASSISTANT
DR. J. FELLICCIA DR. M. SAMOTIN
335 Ovington Ave #202
11209 #238-6400

ANASTHETIST ANASTHESIOLOGY:
General
ESTIMATED BLOOD LOSS: 25 cc

PREOPERATIVE DIAGNOSIS:
1.STATUS POST FRACTURE TO THE DISTAL LEFT FIBULA, WITH A LATERAL TALR SHIFT

POSTOPERATIVE DIAGNOSIS:
1.OPEN REDUCTION AND INTERNAL FIXATION OF THE LEFT ANLE

DESCRIPTION OF PROCEDURE:
The patient was brought into the operating room and placed on the operating room table. One gram of Ancef was given preoperatively. A tourniquet was placed on the left upper thigh. The leg from the toe to above the knee was prepped and draped in the usual sterile manner. The leg was elevated and an Esmarch bandage was used to exsanguinate the extremity. The tourniquet was then inflated to 300 mm. of mercury.

Following this, a 2 ½ inch anteromedial incision was made. Dissection continued through the subcutaneous tissues. The medial malleolus was visualized and the joint was visualized. Part of the deltoid ligament was found to be completely subluxated in superficial and deep portions. The joint was copiously irrigated and there was found to be no loose bodies and no fractures of the talar dome or the tibial plafond.

After this, attention was directed to the lateral side. A four inch incision laterally, directed over the distal fibula was made. Dissection was continued through the subcutaneous tissues down to bone. No nerves were seen in the exposure. A long oblique fracture was seen at the level of the mortise of the fibula. This was curetted of all blood clot and was reduced with a bone holding forceps. Two lag screws were placed using the A-O technique and the fracture was found to be adequately reduced. This was deemed to be sufficient fixation.

After this, attention then turned back to the medial side of the ankle, where the deep and superficial portions of the deltoid ligament were carefully reapproximated into their beds, deep to the posterior tibial tendon. After this, 2-0 Dexon was used to close the subcutaneous tissues. Staples was used to close the skin. Owens gauze, impregnated with Betadine, was applied over the wound, as well as sterile dressings and webril. A short leg cast was placed with the ankle in neutral position in the usual sterile manner. Intraoperative x-rays revealed excellent fixation had been achieved.

There was no complications during the surgery. The patient tolerated the procedure well, and will be on Ancef postopertively, as per routine.

MS/AR TSPS
DD: 4/13/95
DT: 4/13/95
#V2

sgd.

DR. J FELICCIA

1

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS

----------X

ROBERT BANUSHI and VJOLLCA BANUSHI,

Plaintiffs,

- against -

KOSTA LAMBRAKOS, JAMES LAMBRAKOS, GEORGE STATHAKOPOULOS and A & S MEAT MARKET, INC.,

Defendants.

----------X

Tuesday, September 8, 1998
1:30 p.m.
Held at the Offices of
Scott W. Epstein, Esq.
57 West 38th Street, 7th Floor
New York, New York 10018
Index No. 4311/96

EXAMINATION BEFORE TRIAL of
JIMMY LAMBRAKOS,

Defendant, held as above noted, pursuant to Court Order of the Han. Theodore Jones, J.S.C., before Ileen Greenberg, a Notary Public of the State of New York.

ILEEN GREENBERG, Court Reporter
(914) 698-4868

A. We were both standing.

Q. And running towards you?

A. Yes, he was coming, come right out.

Q. What happened next?

A. Then we stopped on the street.

Now, and then the cops came. And I mean, I stopped, I walked away. I walked in the store and then two seconds later police came. And police came in and asked me and he says, were you involved in the fight?

And I said, yes.

He goes, what happened?

I said to him basically, you know, he came in the store and he started cursing me out, something that I said and something.

He said to me, you want to press charges?

And I said, well, I don't know, if he's going to press charges, I'm going to press charges, too.

He went back outside, he was asking them. And he came back and he says, I ' m either going to have to arrest both of you or --

I said, what does he say?

He said, he doesn't know what he's saying.

I said, you tell me what to do.

So I guess they took the information down. And somebody saw something, somebody --I don't know what they did, and they just said to me -- well? They hang around the store a few minutes and left.

Q. How many cops were there?

A. I would say there were a few of them at least four, five.

Q. Do you know the names of any of the cops?

A. Not really.

Q. Have you ever seen any of those cops around?

A. I seen them around. They come around when they give the fliers for the --

Q. Do you recognize any of them by face?

A. By face, I recognize them.

Q. Do you know any of the names?

A. Of the names? No names, I don't know. Faces I know, because they come in the

store for the -- they come around to collect, or they give fliers, or sometimes for alcohol or when they have festivals and stuff like that.

Q. At the beginning of your last answer you said that Mr. Banushi got up from his tussle with Stefanos and charged you again, the crowd separated you two and you went back in the store again.

A. Yes.

Q. For the second time, right?

A. Second time, right.

Q. How long were you in the store before something happened in regard to this incident?

MR. BECKLEY: I don't

Q. Is the next thing that happened when the police came in?

A. The police came in about a minute, minute-and-a-half.

Q. After you went in the store?

A. Yes.

Q. Were you on the sidewalk when the police pulled up?

Mr. Lambrakos' Answer.

MR. EPSTEIN: Let the record reflect he was trying to help me out with the last name.

Q. Luis the painter?

A. I probably know him by name. I don't know his exact name.

Q. How long was your conversation with the police?

A. The police?

Q. Yes?

A. I would say about 10 minutes

Q How many officers were you talking to?

A. I would say about three, three, four.

Q. From the time that Mr. Banushi came into the store, how much time elapsed until the time the police came in?

A. Maybe four minutes.

Q. The whole thing three, four minutes?

A. Four, five minutes.

Q. If this started with Mr. Banushi

about 10:00 in the morning, what time did the police get there?

A. I would say about 4, 5 minutes after.

Q. So that would be 4 or 5 after 10:00 in the morning.

MR. EPSTEIN: You have to answer yes or no for the reporter.

MR. BECKLEY: Are you guessing?

THE WITNESS: I'm guessing back now.

Q. Was it in the morning?

A. Definitely.

Q. Did the police ever tell you that you were under arrest?

A. The police said: I am the sergeant in charge. I am going to have to arrest both of you. He says this to me: Do you want to press charges?

If he wants to press charges, I will press charges, too, I said to him.

When he comes back he says, this guy doesn't make sense. I don't know what he's talking about.

Then I say, if he charges, I will too. That is what he told me.

Q. What language was that police officer speaking?

A. English.

Q. Did he speak in Greek to you?

A. No.

Q. When Mr. Banushi came in, what language was he speaking?

A. Half Greek, half English.

Q. What happened after that officer said that, did he ever place handcuffs on you?

A. No. He basically talked to me and said, what happened?

I said to him, well, you know, he came in the store and started cursing me, and it was an altercation, we went outside and, you know, he hit me, I hit him. That's it.

Q. Was that the last time you spoke to a police officer before this?

A. Yes.

Q. Did you go to the precinct later that day to press charges?

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS: CIVIL TERM: Part 42

ROBERT & VJOLLCO BANUSHI,

Plaintiffs,

- against -

KOSTA & JAMES LAMBRAKOS, GEORGE STATHAKAPOLOUS, A&S DELI & MEAT MARKET, INC.,

Defendants.

Index No. 4311/1996
Trial
15 Willoughby Street
Brooklyn, New York
March 8 - March 13, 2002

Before:

HONORABLE IRA B. HARKAVY,
Justice, and a jury.

Appearances:

ROBERT BANUSHI
Plaintiff pro se

MARSHALL, CONWAY & WRIGHT, P .C .
Attorneys for Defendants
116 John Street
New York, New York 10038
BY: JOSEPH J. ANDRIOLA, ESQ., of Counsel

HAMITE ARIFI (3/8/02)
LULJETA VENESRI (3/11, 3/12, 3/13/02)
EILEEN McLOUGHLIN, C.S.R.,
Senior Court Reporter
Albanian interpreters for pro se plaintiff

earlier, at this time I would call Police Officer Robert Pinnissi

THE COURT: All right, we will put Police Officer Robert Pinnisi on the stand first.

POLICE OFFICER ROBERT PINNISI, called as a witness on behalf of the defendant, having been duly sworn by the Clerk of the Court, upon being examined, testified as follows:

THE CLERK: Please be seated, sir, and in a loud, clear voice, state your name, shield number and command.

THE WITNESS: Police Officer Robert Pinnisi, Shield No. 16675, 68 Precinct, Brooklyn. P-i-n-n-i-s-i.

THE COURT: Allright , Mr. Andriola.

MR. ANDRIOLA: Thank you, your Honor.

Good afternoon, Officer Pinnisi.

THE WITNESS: Good afternoon.

DIRECT EXAMINATION

BY MR. ANDRIOLA:

Q. Are you here today pursuant to a subpoena served on the Police Department?

A. Yes.

Q. Sir, are you still employed by the Police Department?

A. Yes.

Q. What precinct is that?

A The 68 Precinct .

THE COURT: Well, if he does not want the interpreter he can go without the interpreter that's his choice.

THE INTERPRETER: All right, your Honor.

THE COURT: Does Mr. Banushi want to see this document?

THE PLAINTIFF: Sure.

(Handing document to plaintiff.)

THE COURT: Any objection to it going into evidence?

THE PLAINTIFF: No, it's not true,

THE COURT: I'm letting into evidence. I didn't ask whether it's true or not. I'm asking whether there is any objection. It's going into evidence.

(Marked Defendant's Exhibit A in evidence.)

THE COURT: You may continue, Mr. Andriola.

BY MR. ANDRIOLA:

Q. Officer, when you respond to a scene do you make certain observations?

A. Yes.

Q. Sir, looking at the report now marked in evidence, does that report contain your observations about the demeanor of Mr. Banushi on 4-11-95?

A Yes.

Q. And what were those observations?

A. Well, first that he had sustained an injury from a fall and the fact that I observed him to be intoxicated at the time I encountered him.

Q. Does that indicate what time you encountered him?

A. Well, it indicated the time of occurrence.

Q. And what is that?

A. Five o'clock in the afternoon.

Q. Sir, as part of your duties as a police officer, do you deal with drunk people?

A . Yes.

Q. And as part of your training as a police officer, are you trained to identify and deal with drunk people?

A . Yes.

Q. Sir, do you know someone by the name of George Cantanas? (Phonetic spelling.)

A. I'm not sure of the last name.

Q. George Cantanas is the gentleman who was seated back here today?

A Yes.

Q How do you know that individual?

A He was a person who frequented the Bay Ridge community .

Q And have you had any contact with him in your capacity as a police officer in and around April of 1995?

A I had occasion to arrest him around that time. I

Witness on, please, Your first witness.

THE PLAINTIFF: My witness?

THE COURT: Your witness, somebody who goes into the witness box and testifies for you.

THE PLAINTIFF: (in English): Your Honor, Friday there was an interpreter.

THE COURT: Mr. Benushi –

THE PLAINTIFF: Yes.

THE COURT: I will say it for the last time. First witness in the witness box.

THE PLAINTIFF: George Angelis.

MR. ANDRIOLA: Your Honor, may we approach on this?

THE COURT: I don't know.

MR. ANDRIOLA: This witness is not designated as a witness, Judge.

THE COURT: We will see who he is.

GEORGE ANGELIS, called as a witness on behalf of the plaintiff, having been duly sworn by the Clerk of the Court, upon being examined, testified as follows:

THE CLERK: Do you understand English, sir?

THE WITNESS: Yes, sir.

THE CLERK: IN a loud, clear voice, state your name and address for the record.

THE WITNESS: George Angelis, 7520 5th Avenue,

Bay Ridge.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY THE PLAINTIFF:

Q. In April 11, 1995, at 3:30, where were you and where did you go?

A. I came back from the store on 5th Avenue. I used to live on 6th Avenue, though, not on the same avenue.

THE COURT: Where were you at that time, coming back from a store?

THE WITNESS: I was living at 609 71st Street, sir.

THE COURT: Yes.

Q. Tell us what you see, what happened.

A. When I came back from the store, I had to go to 5th Avenue, I was living 6th Avenue, I was walking 79th Street to go to my house and I seen the front of the store, of the deli, these gentlemen James and Gus. I saw a crowd around and I proceed a little closer when I see Mr. Banushi laying on the ground outside of the store, unconscious.

THE COURT: How do you know he's unconscious.

THE WITNESS: Because he don't move. Somebody kicked him.

THE COURT: Don't tell me – did you see somebody kick him?

THE WITNESS: Yes, sir.

THE COURT: Who did you see kick him?

HE WITNESS: I seen Stefanopolis, a guy with a big long beard, kick him repeatedly.

THE COURT: Go on.

THE WITNESS: He wasn't responding when the guy kick him at all. He was flat outside the store.

BY THE PLAINTIFF:

Q. How many feet from the store, outside the deli?

A. There was a crowd, people outside the store, look at you, so the first thing I did was to find a pay phone to call the police. There is a real estate on the corner. I went inside in the real estate. I call the police. A few minutes from there, I hear the police coming and I see ambulance and everything and I left and I go home.

Q. So did you see the defendant outside the store?

MR. ANDRIOLA: Objection.

THE COURT: Objection sustained.

Did you see who?

THE PLAINTIFF: (in English): The defendant.

THE COURT: Which defendant?

THE PLAINTIFF: James Lambrakos or Kosta Lambrakos outside the store.

THE WITNESS: No, I saw the guy with the beard kick you repeatedly.

MR. ANDRIOLA: Can I have this marked?

THE COURT: Defendant's B, I believe.

THE CLERK: So marked for I.D., ambulance report.

Q. Sir, I'm going to show you that document we marked as Defendant's B. I'm going to ask you to read that portion of the document to yourself. It's highlighted. Please look at it and read it, the part that is highlighted.

A. Can I have it translated, because I don't understand?

THE COURT: Well, that's what you are here for.

(Interpreter translates to witness.)

THE WITNESS: No ambulance took me. It was the Fire Department who came.

Q. So my question is, having looked at that document, sir, and specifically the highlighted portion – if you can't understand, we will have the interpreter read to you. Now sir, doesn't that refresh your recollection that you told the Fire Department, okay, that you fell down then because you had been drinking vodka all day?

A. What year?

THE COURT: December 1995.

Q. Didn't you tell –

A. Did they have an interpreter with them that they knew how to write it?

THE COURT: Excuse me, does he remember from

JURY NOTE

Hon. Ira B. Harkavy **Time: 1410**

Ind.# 4311-1996 **Date: 3/13/02**

CAPTION: Banushi v. Lambrakas
Plaintiff, Defendant.

In reference to Question #2, can the charge of Battery be clear, as to what Battery consist of.

We the Jury want to see the Police Report of the Officer that arrived on the scene.

SIGNED _____
(Foreperson)

DO NOT WRITE BELOW THIS LINE

COURT EXHIBIT 2

March 13, 2002

Verification of Crimes
Lost Property
PD 542-061 (Rev. 9-86)-18
Do Not Detach - Submit in Duplicate

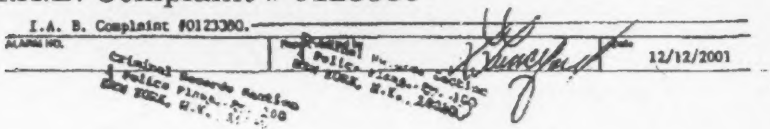
Search and service fee of $15.00 MUST accompany this application. Except that CRIME VICTIMS will be entitled to a FREE COPY of this report. MAKE CHECK OR MONEY ORDER PAYABLE TO THE POLICE DEPARTMENT, CITY OF NEW YORK. Mail all requests to the Police Department, Criminal Records Section, P.O. Box 2526, New York, 10272-2528. No refund of the search and service fee will be made in any case. **ALL APPLICANTS must enclose a stamped self-addressed envelope.**

Complaint number: 2001-068-008266
Precinct of Report: 58
Mail record to: Robert Banushi, 46 Parrott Place, 1 Fl, Brooklyn, NY 11228

1. Exact location where crime/loss took place: A&S Deli and Meat Market, 7918 5th Avenue, Bklyn, NY 11209, 3:30 pm
Precinct of occurrence: 68
2. Date reported to police: 11/19/2001 4-11-095 Time: 1415 3:30 PM This report concerns: Crime
3. Full name and address of complainant/victim as reported to Police Department: Robert Banushi, 46 Parrott Place, 1 Fl, Brooklyn, NY 11228
Date and Time of Crime/loss of Property (If different that date of Report): Date: 4/11/95-4/11/95 12-5-01 Time: 1530-1530 5PM Name of officer who received your report, if known: Det. Riccardi

Criminal Records Section
1 Police Plaza, Rm. 308
New York, N.Y. 10038

Briefly describe Manner of Crime/Loss of Property
Aided Case – Store
Complainant/Victim came into the Station House to state that he was assulted by the listed perpetrators. Victim was taken to the hospital (Luteran Medical). Victim was bleeding from his left ankle after perpetrators beat him up inside the store at the listed location. Perpetrators are the owners of A&S Deli and Meat Market. Complainant states that he had previously reported this incident in 1995, but now police Plaza is telling him that the report was voided for unknown reasons.
I.A.B. Complaint # 0123380



CIVILIAN COMPLAINT REVIEW BOARD
40 RECTOR STREET, 2ND FLOOR
NEW YORK, NEW YORK 10006 • TELEPHONE (212) 442-8833

JOSEPH W. GIULIANI
MAYOR

GENE H. LOPEZ
EXECUTIVE DIRECTOR

November 9, 2001

Mr. Robert Bonushi
46 Parrot PL
Dyker Heights, NY 11228

RFF: OCD 200107688

Dear Mr. Bonushi:

The receipt of your complaint is hereby acknowledged.

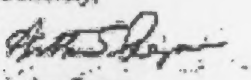
Please be advised that the Civilian Complaint Review Board has jurisdiction over complaints against members of the New York City Police Department that allege excessive use of force, abuse of authority, discourtesy, or use of offensive language, including slurs relating to race, ethnicity, religion, gender, sexual orientation and disability. We have determined that your complaint does not fall within the Board's jurisdiction.

The Office of the Chief of Department (OCD) of the New York City Police Department has jurisdiction over complaints that question the validity of summonses and arrests, and the competence with which police officers perform their general duties. Therefore, your complaint has been referred to the Chief of Department for investigation.

An OCD control number has been obtained for you and it appears at the top of this page. An investigator assigned by the Office of the Chief of Department will contact you and will handle all further action regarding your complaint.

If you have any questions, please contact the Office of the Office of the Chief of Department, 1 Police Plaza, New York NY 10038; telephone number (212) 374-5176. Please refer to your OCD control number when making all inquiries.

Sincerely,



Arthur Regan
Director of Case Management

CCRB
Nov. 29, 2001

COMPLAINT REPORT (CCRB)

CCRB Case No.: 200107688
C/V Report Date: 11 28 2001 3:26 PM
Complaint Type: OCD
Investigator: Not Assigned
Complaint Made at: CCRB
Ref. No.
Received Date (CCRB): 11 28 2001 2:00 PM
Mode: In-person
Incident Date: 04 11 1995
Location:
Place of Occurrence: 46 Parrot Place
Precinct: 68
Boro: Brooklyn
Reason for Initial Contact:
Charges: No arrest made or summons issued

Complainant/Victim Details
Name: Robert Bonushi
Type: Comp/Victim
Address: 46 Parrot PL, Dyker Heights, NY 11228
Contacts: (718) 238-4320
Gender: Male
Ethnicity: White
Date of Birth: 05/05/1959
Person Assisting:
Injury Details:

Officers Named in Complaint
Incident Narration

On April 11, 1995 at approximately 3:30 p.m. in the c/w was the victim of assault and the officer's that filled out the report was incorrect. He feels that the improper report is a hindrance to both efforts.

Witness

CIVILIAN COMPLAINT REVIEW BOARD
40 RECTOR STREET, 2ND FLOOR
NEW YORK, NEW YORK 10006 • TELEPHONE (212) 442-8833
www.nyc.gov/ccrb

MICHAEL R. BLOOMBERG
MAYOR

FLORENCE L. FINKLE
EXECUTIVE DIRECTOR

October 1, 2003

Mr. Robert Bonushi
46 Parrot Place
Brooklyn, NY 11228

RE: OCD 200307558

Dear Mr. Bonushi:

The Civilian Complaint Review Board (CCRB) acknowledges the receipt of your complaint.

The CCRB has jurisdiction to investigate complaints filed against officers of the New York City Police Department that allege excessive use of force, abuse of authority, discourtesy, or use of offensive language, including slurs relating to race, ethnicity, religion, gender, sexual orientation and disability. We have determined that your complaint does not fall within the board's jurisdiction, either because the allegations do not fall within our jurisdiction or because the subject of the allegations is a civilian employee of the police department.

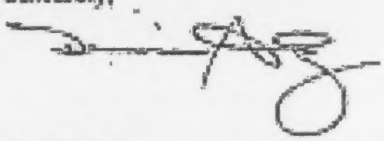
The Office of the Chief of Department (OCD) of the New York City Police Department has jurisdiction to investigate complaints that question the validity of summonses and arrests, and the competence with which police officers perform their general duties; it

is also authorized to investigate complaints filed against civilian employees of the police department. Therefore, we have referred your complaint to the Office of the Chief of Department for investigation.

An OCD control number has been obtained for you and it appears at the top of this page. An investigator assigned by the Office of the Chief of Department will contact you and will handle all further action regarding your complaint.

If you have any questions, please contact the Office of the Chief of Department, 1 Police Plaza, New York, NY 10038, telephone number (646) 610-6952. Please refer to your OCD control number when making all inquiries.

Sincerely,



Denise Alvarez
Director of Case Management

CCRB
Oct 01, 2003

COMPLAINT REPORT (CCRB)

CCRB Case No.: 200307558
C/V Report Date: 09/26/2003 12:00 PM
Complaint Type: OCD
Investigator: Not Assigned
Complaint Made at: CCRB
Ref. No.
Received Date (CCRB): 09/26/2003 12:00 PM
Mode: In-person
Incident Date: 04/11/1995
Location:
Place of Occurrence: 46 Parrot Place
Precinct: 68
Boro: Brooklyn
Reason for Initial Contact: Other
Charges: No arrest made or summons issued

Complainant/Victim Details
Name: Robert Bonushi
Type: Comp/Victim
Address: 46 Parrot PL, Dyker Heights, NY 11228
Contacts: (718) 238-4320 Phone (Home)
Gender: Male
Ethnicity: White
Date of Birth: 05/05/1959
Person Assisting:
Injury Details:

Officers Named in Complaint
Rank: POM
Officer: Robert Pinnisi

S/W Officer: Subject Officer
Tax No. 898298
Race: White
Cmd Allegations: 068

Incident Narration

Robert Bonushi was interviewed at the CCRB as a walk-in complainant by Investigator Chanin of Team 6 on September 26, 2003. His sole purpose in coming to the CCRB was to have information added to a previous case of his from November 28, 2001, case #200107688, which was referred to OCD. Mr. Bonushi wished the record to reflect that when the subject officer of his complaint, PO Robert Pinnisi, tax #898298, testified in Mr. Bonushi's civil lawsuit trial from March 8 to March 13, 2002, PO Pinnisi provided information which contradicted paperwork that was previously filled out for the incident. Specifically, PO Pinnisi did not indicate in his testimony that Mr. Bonushi's original complaint in 1995 had been voided. Furthermore, PO Pinnisi provided a different address of incident in his testimony. Finally, in his testimony PO Pinnisi stated that he did not actually recall the incident in 1995, and that his account of the incident was only based on paperwork.

Witness

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

Robert Banushi,

Plaintiff,

- against -

-

The City of New York, Police Officer Robert Pannisi (NYPD) Shield No. 16675, "Jane and John Doe" Unknown NYPD Officers,

Defendants.

----------X

CV-05-1805 (CPS)
MEMORANDUM OPINION AND ORDER

SIFTON, Senior Judge.

Plaintiff Robert Banushi ("Banushi") brings this action against defendants The City of New York ("City"), Police Officer Robert Pannisi (NYPD) Shield No. 16675, and "Jane and John Doe" Unknown NYPD Officers ("Jane Doe" and "John Doe"), alleging violations of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. §1983, and common law claims of prima facie tort and fraud,[1] seeking

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[1] 1 Plaintiff's claims are the following:
(1) Claim one alleges that the City of New York through its agents violated Banushi's rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 by failing to provide him with police protection.
(2) Claim two alleges that the City of New York through its agents violated Banushi's rights under the Equal Protection

compensatory and punitive damages, plus reasonable attorneys' fees, costs, and disbursements pursuant to 42 U.S.C. § 1988. Plaintiff alleges that following an assault outside a Brooklyn delicatessen, Officer Pannisi and other police officers violated his rights by not arresting his assailants and by refusing to provide plaintiff with a police report of the incident, compromising plaintiff's ability to pursue personal injury claims against his attackers.

Presently before the Court is defendants' motion for summary judgment pursuant to Federal Rule of Civil Procedure 56.[2] Defendants seek dismissal of plaintiff's complaint, arguing: (1) ,that plaintiff's claims are time-barred; (2) that plaintiff's equal protection claims fail as a matter of law because he cannot show that he was treated differently than other similarly situated individuals; (3) that plaintiff's claim based on a failure to protect

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Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 by fraudulently declining to provide Banushi with a police report.

(3) Claim three alleges that the City of New York through its agents violated Banushi's rights under the Constitution and laws of the State of New York by failing to provide Banushi with police protection,

(4) Claim four alleges that Officer Pannisi and the City committed a prima facie tort by denying him a police report without excuse or justification.

(5) Claim five alleges that Officer Pannisi committed fraud "by voiding the police report, and by not recording the incident."

[2] On March IS, 2005, I granted defendants' motion to dismiss pursuant to Rule 12(c) of the Federal Rules of Civil Procedure and granted plaintiff leave to amend his complaint. Plaintiff's amended complaint is the subject of the motion presently before the Court.

him fails as a matter of law because he does not establish that defendants had a duty to protect him or that a special relationship existed giving rise to such a duty; (4) that the pendent state law claims should be dismissed because plaintiff has failed to file a timely notice of claim; and (5) that plaintiff fails to state claims for prima facie tort or fraud. [3]For the reasons that follow, defendants' motion for summary judgment is granted since all claims are barred under the applicable statutes of limitations.

Background

The following facts are taken from the parties' submissions in connection with this motion, including plaintiff's complaint, depositions, affidavits, exhibits, and Rule 56.1 statements. Disputes are noted.

On April 11, 1995, Robert Banushi, who describes himself as Albanian, was attacked outside a Brooklyn delicatessen by two brothers Kosta and Jimmy Lambrakos and another individual named Stefano Evangelis. Banushi suffered a broken ankle as a result of the attack. Police officer Pannisi and other unidentified officers responded to the scene of the assault. Plaintiff alleges that medical records falsely state that his injury was caused by a fall from a bicycle.

Six months after the attack, in late 1995, plaintiff obtained the number of the police report he believed Officer Pannisi filed subsequent to the

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[3] Defendants also argue that any claim of conspiracy must fail, but because plaintiff does not assert a claim of conspiracy, this argument need not be addressed.

attack. On February 7, 1996, Banushi filed a civil complaint against his assailants in New York state court seeking to recover damages for his injuries. Plaintiff's counsel withdrew from that case in March. In October 1996, plaintiff went to the police station to obtain a copy of the police report. In response to his request, an unidentified police station employee handling such queries said "we don't have the police report." Banushi asked, "Why? Where is it?", and the employee replied "we don't know." She gave him a form to complete and mail back regarding the missing report. He returned to the precinct several times to inquire about the missing report, and each time, was instructed to complete and mail back the form. Plaintiff returned a completed form in October or November 1997, and received a letter from the Criminal Records Section in April 1998, which stated that the police report had been voided and the index number re-used. Plaintiff states that he took no other steps to obtain the report between mid-1996 and April 1998 because he was "looking for a lawyer."

After he received the April 1998 letter from Criminal Records, Banushi hired a second lawyer to represent him in his action against his assailants and to investigate what happened to the police report. With his lawyer, plaintiff met with a detective who said he would find the report. Plaintiff states that he did not follow up with the detective because he "had a lawyer handling this." The lawyer informed him that the report was "lost" or "missing" and that "the detective is working on this." After this lawyer withdrew his representation as well, plaintiff did not contact the detective.

On November 19, 2001, in preparation for the civil trial of plaintiff's claims against his attackers, plaintiff, representing himself, requested again a copy of the police report concerning the incident from the New York Police Department. Again the Department did not provide one. The Department's Internal Affairs office informed Banushi that the report was "not in the system" and that the police report number that Banushi provided corresponded to a statement regarding a different case. The complaint alleges that Officer Pannisi either fraudulently "voided" the police report or never made the police report. In place of the requested report, Internal Affairs gave plaintiff a Verification of Crime/Lost Property report dated December 12, 2001, nearly six years after the incident and shortly after his request. In March 2002, during the trial, the jury asked to see the police report allegedly prepared by Officer Pannisi, but Banushi states that the Lost Property report that Internal Affairs provided "did not suffice" and the jury found for Banushi's assailants.

On March 4, 2004, Banushi's attorney told plaintiff that Officer Pannisi's lack of filing a police report was "fraudulent." On May 26, 2004, plaintiff commenced this action in the Eastern District of New York against the current defendants and the New York Police Department. On March 15, 2005, I granted defendants' motion to dismiss and granted plaintiff leave to re-plead his claims within thirty days. Plaintiff filed his most recent complaint on April 11, 2005.

Discussion

Jurisdiction

This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, which creates jurisdiction over civil actions arising under federal law; 28 U.S.C. § 1343, which creates jurisdiction over actions arising under 42 U.S.C. § 1983; and 28 U.S.C. § 1367, which creates supplemental jurisdiction over claims arising under state law.

Summary Judgment Standard

A court must grant a motion for summary judgment if the movant shows that "there is no genuine issue as to any material fact" and that "the moving party is entitled to a judgment as a matter of law. 11 FED. R. Crv. PRO. 56(c). Summary judgment is appropriate "[w]hen the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Matsushita Elec. Indus. Co" Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

"An issue of fact is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Elec. Inspectors, Inc. v. Village of East Hills*, 320 F.3d 110, 117 (2d Cir. 2003). A fact is material when it "might affect the outcome of the suit under the governing law." Id.

The party seeking summary judgment has the burden of demonstrating that no genuine issue of material fact exists. *Apex Oil Co. v. DiMauro,* 822 F.2d 246, 252 (2d Cir. 1987). In order to defeat such a motion, the non-moving party must raise a genuine issue of material fact. Although all facts and inferences therefrom are to be construed in the light most favorable to the non-moving party, the non-

moving party must raise more than a "metaphysical doubt" as to the material facts. See *Matsushita*, 475 U.S. at 586; *Harlen Assocs. v. Vill. Of Mineola*, 273 F.3d 494, 498 (2d Cir. 2001). The non-moving party may not rely on conclusory allegations or unsubstantiated speculation. *Twin Labs., Inc. v. Weider Health & Fitness*, 900 F.2d 566, 568 (2d Cir. 1990). The non-moving party must produce more than a scintilla of admissible evidence that supports its position. *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 289-90 (1968); *Niagara Mohawk Power Corp. v. Jones Chem. Inc.*, 315 F.3d 171, 175 (2d Cir. 2003).

"The trial court's function in deciding such a motion is not to weigh the evidence or resolve issues of fact, but to decide instead whether, after resolving all ambiguities and drawing all inferences in favor of the non-moving party, a rational juror could find in favor of that party." *Pinto v. Allstate Ins. Co.*, 221 F.3d 394, 398 (2d Cir. 2000).

Defendants' Summary Judgment Motion

Statute of Limitations

(A) Federal Claims

The parties agree that a three-year statute of limitations applies to claims brought under 42 U.S.C. § 1983 and the Fourteenth Amendment. See Connolly v. McCall, 254 F.3d 26 (2d Cir. 2001) (applying New York's three-year statute of limitations to Equal Protection claims brought pursuant to 42 U.S.C. § 1983). The statute begins to run when a plaintiff's claim accrues or when the

plaintiff knows or has reason to know of the facts upon which his claims are based. *Cornwell v. Robinson,* 23 F.3d 310, 317 (2d Cir. 2004); *Veal v. Geraci,* 23 f.3d 722, 724 (2d Cir. 1994) (holding that "claim accrues when the alleged conduct has caused the claimant harm and the claimant knows or has reason to know of the allegedly impermissible conduct and the resulting harm"); *Singleton v. City of New York*, 632 F.2d 185 (2d Cir. 1997). "A plaintiff's ignorance of injury does not toll a statute of limitations if, with the exercise of reasonable diligence, the plaintiff could have learned of the wrong prior to the date of actual discovery." *Waler v. Jastremski,* 159 F.3d 117, 119 (2d Cir. 1998).

Parties dispute the date on which plaintiff's federal claims accrued. Plaintiff argues that November 19, 2001 should be the date of accrual, the date on which the Police Department's Internal Affairs office did not provide Banushi with the police report he requested for the civil trial of his claims against his attackers. Internal Affairs stated that the report was "not in the system" and that the number had been re-used. Plaintiff asserts that this was the date "when plaintiff knew that the police report prepared by defendant Robert Pannisi had been missing and was not in the system." [4] This date

---

[4] When defendants' previously moved to dismiss under Rule 12(c), the parties disputed when Banushi should have become aware of his injury. I concluded in my memorandum and opinion from March 15, 2005 that whether Banushi should have discovered through due diligence that the report was missing prior to November 19, 2001 was a factual question that should not be decided on the pleadings. Since that time, additional undisputed facts have come to light establishing that

is within three years of the filing of plaintiff's first complaint.

However, it is now clear that Banushi knew the report was missing as early as October 1996, eighteen months after his attack, when he first inquired about the report at the police station. He was given a form to complete and mail regarding the missing report, which he did not return until a year later. The April 1998 letter the Criminal Records Section sent to Banushi in response confirmed that the police report had been voided and the index number re-used. Plaintiff obtained the same information in November 2001 and did not bring an action based on these facts until May 26, 2004. During this entire time, plaintiff was also aware that his assailants had not been arrested and that medical records stated that his injury was caused by a fall from a bicycle. Because plaintiff was aware of the circumstances that gave rise to his claims as early as October 1996 or as late as April 1998, plaintiff's federal claims are time-barred. [5]

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plaintiff knew the report was missing well before November 2001.

[5] Plaintiff's argument that the defendants' alleged fraudulent concealment of the report tolled the statute of limitations is also without merit as a matter of law. Because plaintiff knew of the injury and circumstances upon which his claims are based before November 2001, plaintiff has not "introduced sufficient evidence to create issues of fact as to the availability of deferred accrual or a fraudulent toll u on his claims. *Yeadon v. New York City Transit Authority*, 719 F.Supp. 204, 209 (S.D.N.Y. Aug. 4, 1989). He has not offered evidence sufficient to raise a triable issue of fact as to the requisite elements: "(1) that defendant concealed critical information from plaintiff; (2) the concealment prevented plaintiff from discovering his claim

Accordingly, plaintiff's claims one, two, and three described above are dismissed.

(B) State Law Claims

The statute of limitations for pendent state law claims is determined by state law. *Guaranty Trust Co. v. York*, 326 U.S. 99, 110-11 (1943) *Reid v. Madison*, 455 F.Supp. 1066, 1068 (E.D.Va. Aug. 10, 1978) (stating that this principle is "elemental"). Under New York State General Municipal Law § 50-i, personal injury claims brought against a city or any of its officers, agents, or employees must be commenced within one year and ninety days after the occurrence of the event upon which the claim is based. New York General Municipal Law § 50-i. *See Singleton v. The City of Newburgh*, 1 F.Supp.2d 306 1 316 (S.D.N.Y. Apr. 6, 1998) *Gonzalez v. City of New York,* No. 94-7377, 1996 WL 227824, at * 3 (S . D. N. Y. May 3, 1996). Whether the events upon which the state law claims are based occurred in 1995, 1996, 1998, or 2001, plaintiff did not bring his state law

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within the limitations period; and (3) plaintiff could not have discovered his claim in the exercise of due diligence." *Id. See also In Re Sumitomo Copper Litigation,* 120 F.Supp.2d 328, 346 (S.D.N.Y. Oct. 30, 2000).

Plaintiff asserts his federal claims based on the facts that the report was missing or voided, that Pannisi and other officers failed to make arrests at the time of the incident, and that hospital records indicated his injury was caused by a fall from a bicycle rather than an attack by three individuals. Plaintiff became aware of all of these facts before the statute of limitations expired. Thus even assuming defendants attempted at some time to conceal information from plaintiff and that he exercised due diligence to discover the truth, defendants' concealment in no way prevented plaintiff from filing a timely claim within the limitations period.

claims within the applicable limitations period.[6] Therefore, claims four and five are time-barred, and they are accordingly dismissed. [7]

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[6] For the reasons stated in the footnote above, plaintiff's argument that defendants' fraudulent concealment tolled the limitations period for his state law claims fails. Plaintiff became aware of his claims before the statute of limitations expired. While plaintiff argues that the state law claims were tolled until March 4, 2004, when plaintiff's attorney suggested to him that defendants' acts amounted to fraudulent concealment, defendants are not responsible for plaintiff's delay in consulting a lawyer until long after he became aware of the facts on which a claim of fraudulent concealment might be based. See, *e.g.*,*Kozonasky v. Sears Roebuck & Co.*, No. 81-2164, 1986 WL 12528 (S.D.N.Y. Oct. 27, 1986) (denying tolling of limitations period under fraudulent concealment doctrine because plaintiff had sufficient knowledge of facts to raise claims against defendants and plaintiff did not explain why he failed to consult an attorney earlier); *Blohm + GmbH, Fortis Bank (Nederland) N.V. v. M/V Olympia Explorer*, No. 05-7753, 2006 WL 2472044, at *3 (S.D.N.Y. Aug. 4, 2006) (stating that failure to consult counsel "does not excuse the delay" in filing motion to intervene, particularly when movants knew or had reason to know of facts based upon which they could have timely moved to intervene).

[7] Under 28 U.S.C. § 1367(c) (3), a district court may decline to exercise supplemental jurisdiction over claims related to federal claims if "the district court has dismissed all claims over which it has original jurisdiction." Therefore, because I dismissed the federal claims, I may decline jurisdiction over the state law claims. However, this provision is not mandatory and a federal court's exercise of pendent jurisdiction "lies in considerations of judicial economy, convenience and fairness to litigants." *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726 (1966). State claims may also be dismissed without prejudice "if it appears that the state issues substantially predominate." *Id.* In the interests of the parties' convenience and because the state claims do not dominate this case, I have accordingly exercised my discretion to address the state claims here.

Conclusion

For the foregoing reasons, defendants' motion for summary judgment is granted.

The clerk is directed to enter judgment dismissing the complaint and to furnish a copy of the within to the parties and to the magistrate judge.

SO ORDERED.

Dated: Brooklyn, New York
September 28, 2006

By: s/ Charles P. Sifton (electronically signed)
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

ROBERT BANUSHI,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER ROBERT PANNISI, (NYPD) Shield No. 16675, "JANE and JOHN DOE" UNKNOWN NYPD OFFICERS,

Defendants.

----------X

JUDGMENT
05-CV- 1805 (CPS)

FILED
IN CLERKS OFFICE
U.S. DISTRICT COURT ED. N.Y.
P.M._____
TIME A.M. _____

A Memorandum and Order of Honorable Charles P. Sifton, United States District Judge, having been filed on Charles P. Sifton, United States District Judge, having been filed on September 28,2006; granting defendants' motion for summary judgment; and directing the Clerk of Court to enter judgment dismissing the complaint; it is

ORDERED and ADJUDGED that plaintiff take nothing of the defendants; that defendants' motion for summary judgment is granted; and that judgment is hereby entered dismissing the complaint.

Dated: Brooklyn, New York
October 13, 2006

Robert C. Heinemann
Clerk of Court

By: Terry Vaughn
Terry Vaughn
Chief Deputy of
Court Operations

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 9 day of MARCH , two thousand seven,

Hon. Ralph K. Winter,
Hon. John M. Walker, Jr.,
Hon. Chester J. Straub,
Circuit Judges.

Robert Banushi,
Plaintiff-Appellant,

v.

City of New York, et al.
Defendants-Appellees.

06-4879-cv

Appellant, pro se, moves for appointment of counsel, to expedite his appeal, and to supplement the record on appeal. Upon due consideration, it is ORDERED that the motions are DENIED and the appeal is DISMISSED because it lacks an arguable basis in fact or law. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989), 28 U.S.C. §1915(e).

FOR THE COURT:
Thomas W. Asreen, Acting Clerk
By:
Richard Alcantara, Deputy Clerk

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse at Foley Square
40 Centre Street, New York, NY 10007
Telephone: 212-857-8500

MOTION INFORMATION

Docket Number(s): 06-4879
Motion for: Reconsideration

Banushi v. City of New York

Set forth below precise complete statement of relief sought:
Reconsideration of order 3/9/07

Moving Party: Robert Banushi
Plaintiff
Moving Attorney: Pro Se

Opposing Party: City of New York
Opposing Attorney: Anne E. Scherzer
100 Church Street
New York, NY 10007

Court-Judge/Agency appealed from: EDNY Hon. Charles P. Sifton,

Please check appropriate boxes:
Has consent of opposing counsel:
A. been sought? Yes

B. been obtained? No
Is Oral argument requested? Yes
Has argument date of appeal been set? No

For Emergency Motions, Motions for Stays and Injunctions pending appeal:

Has request for relief been made below?
Has this relief been previously sought by this Court?
No

Signature of Moving Attorney: Robert Burnett Date: 3-22-07 Has service been effected? (Attach proof of service) ✓ Yes ☐ No

Order

IT IS HEREBY ORDERED that the motion is GRANTED DENIED.

USCA No.06-4879-cv
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ROBERT BENUSHI,
Appellant

V.

CITY OF NEW YORK, ROBERT PANNISI, POLICE OFFICER, NYPD SHIELD NO. 16675, JANE & JOHN DOE, UNKNOWN NYPD OFFICERS
Appellees

On Appeal from the United States District Court for the Eastern District of New York

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Brief for Plaintiff-Appellant, ROBERT BANUSHI.

Dated: Brooklyn, New York.
March 22, 2007.

Robert Banushi,
(Pro Se)
46 Parrott Place,
Brooklyn, New York 11228
(718) 238-4320

BY:s/_____
ROBERT BANUSHI

District Court Index No. 05-cv-180(CPS)

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ARGUMENT

SUMMARY ORDER OF DISMISSAL OF APPEAL WAS ENTERED IN ERROR BECAUSE APPELLANT'S APPEAL IS NOT LACKING IN MERIT AND IS NOT FRIVOLOUS OR LACKING IN ARGUABLE BASIS IN LAW OR FACT. THE DISTRICT COURT ERRED IN FAILING TO FIND THAT APPELLANT'S ACTION ARTICULATED A COMPLAINT OF FRAUD WHICH WAS COMMENCED WITHIN BY THE APPLICABLE STATUTE OF LIMITATIONS PERIOD.

A. Standard of Review:
Reconsideration is proper if a party can point to controlling law or facts that the Court overlooked and or misapprehended, which might reasonably be expected to alter the conclusions it reached. *Shrader v. CSX Transp. Inc.*, 70 F.3d 255, 257 (2d Cir. 1995).

B. A District Court May Not Resolve Disputed Factual Issues on Summary Judgment if the Nonmoving Party Presents More Than A Scintilla of Evidence.

C. The Dispositive Issue Is:

Whether upon a proper scrutiny, the District Court could have properly found that upon a consideration of the totality of the facts and circumstances of the case, appellant's case could be said to have articulated a case of fraud committed by Police Officer Robert Pannisi by his act of voiding the police report and testifying falsely at the trial as to the cause of appellant's injuries.

D. There is evidence in the record appellant was injured in an assault and beating which occurred at a store owned by two brothers Jimmy Lambarakos and Costner Lambarakos and Stefano Vangelus their brother in-law, at 7918 5th Avenue Brooklyn New York.

As a result of the assault and severe beating appellant sustained severe injuries including a fracture of his left ankle.

Police officer Robert Pannisi responded to the 911 call, called an ambulance for injured appellant and escorted him to the hospital. He prepared a report of the incident.

It came to light during trial in a personal injury action commenced by appellant pro se, that the police report had been voided and later during said trial, Police Officer Robert Pannisi testifying on behalf of defendants in that action intentionally falsely stated that plaintiff had injured himself in a drunken fall on the street, the reason for which the

jury failed to return a verdict for plaintiff. Officer Pannisi' s said false testimony was rendered on March 8, 2002.

Attempting to article a claim for relief based on fraud of the police officer *inter alia,* appellant commenced his case against appellees in 2004, a period of only two years after the alleged false testimony which completed the alleged fraud. The District Court found that all of plaintiff's claims were barred by the applicable statute of limitations period. And this court upon considering the motion of the indigent appellant, for appointment of counsel, etc., sua sponte dismissed the appeal because, *"it lacks an arguable basis in fact or law "*

The applicable statute of limitation NY CPLR §213(8) provides a six year statute of limitation to be computed from the time the plaintiff or the person under whom he claims discovered the fraud, or could with reasonable diligence have discovered it.

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1. TABLE OF AUTHORITIES

1. Shrader v. CSX Transp. Inc., 70 F.3d 255,257 (2d Cir. 1995)
2. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962).
3. Anderson v. Liberty Lobby Inc; 477 US 255.
4. Rodriguez v. City of New York 72 F3d 1051;
5. Hayes v. New York City DOC 84 F.3d 614.
6. Matsushita Elec Ind Co. V. Zenith Radio Corp 475 US 574; 106 S. Ct. 1348
7. Montana v. First Federal Sav & Loan Assoc, 869 F.2d 100, 107 (2d Cir 1989)

2. SUMMARY OF ARGUMENT

Appellant's action is not frivolous and it is not lacking in arguable basis in fact or law. Appellant's case clearly articulated a claim for a relief based on fraud of police officer, Robert Pannisi comprised in his intentionally voiding the police report and intentionally falsely testifying about the incident in court on March 8, 2002. The applicable statute of limitation NY CPLR §213(8) provides a six year statute of limitation to be computed from the time the plaintiff or the person under whom he claims discovered the fraud, or could with reasonable diligence have discovered it.

Appellant's district court case commenced in 2004, is thus timely commenced within six years, reckoning from the time the fraud was completed: March 8, 2002.

3. STATEMENTS OF RELEVANT FACTS.

Officer Robert Pannisi in the course of his duties as a New York City Police officer responded to a 911 call on April 11, 1995 at 7918 5th Avenue in Bayridge, Brooklyn, New York and found Appellant assaulted and beaten up in a pool of his own blood, called an ambulance and escorted the ambulance which took the Appellant to the hospital. Officer Pannisi generated a complaint No. 2971 regarding the incident.

At the hospital, appellant was diagnosed with,

"fracture of the lateral malleolus of the left ankle with posterolateral displacement of fracture fragment and subluxation of the ankle mortise".

Plaintiff commenced a civil action pro se against defendants for personal injuries in the Supreme Court of the State of New York. On April 15, 1998 upon the orders of the Court appellant applied for a copy of the police report but was advised that *"complaint No. 2971 was voided and indexed as 1995 and reused. "*

On March 8, 2002, testifying for defendant's appellant's assailants, in said civil case, officer Robert Pannisi falsely testified that appellant sustained his injury from a drunken fall on the street. Appellant contended that Officer Pannisi

acted unlawfully and testified falsely as aforesaid with a view to a covering up the crime and to aid appellant's assailants, the defendants. In their deposition testimony, plaintiffs assailants testified that they had a special relationship with Officer Pannisi who they claimed was a friend or acquaintance.

The applicable statute of limitation NY CPLR §213(8) provides a six year statute of limitation to be computed from the time the plaintiff or the person under whom he claims discovered the fraud, or could with reasonable diligence have discovered it.

ARGUMENT:

4. THE COURTS ORDER OF DISMISSAL

Motion is hereby respectfully made by appellant for this court to reconsider its Order of dismissal upon the following reasons.

While it is understood by Plaintiff that motions of reconsideration are generally disfavored, appellant feels the court should most carefully weigh its judgment and therefore presents the opportunity to the court before appellant undertakes an appeal of the judgment.

With all due respect, appellant asserts that it is clear that the court failed to give adequate consideration to the totality of the case of the appellant. The facts of the case notwithstanding the in-artfully drawn up pleadings clearly evinces clear fraud on the part of the police officer. The testimony of the Police Officer Robert Pannisi that appellant sustained an injury from a fall (Pannisi Tr Evid Exh

4 p. 52) was not even supported by the account rendered by defendants see for instance, Jimmy Lambrakos admitted that there was a fight between them and appellant (Depo Tr. Exh 6pp17-20.). The disappearance of the police report is thus not a coincidence. It was part of a chain of events calculated to defraud the appellant and drive him from the seat of justice. It culminated in the false testimony rendered by the police office in court. The knowledge of the fraud, it is submitted can only be imputed to appellant commencing from the date it was completed – the date of the testimony, March 8, 2002.

5. DISCUSSION

Reconsideration is proper if a party can point to controlling law or facts that the Court overlooked and or misapprehended, which might reasonably be expected to alter the conclusions it reached. *Shrader v. CSX Transp. Inc.*, 70 F.3d 255, 257 (2d Cir. 1995).

In this instance, Plaintiff believes that the district court overlooked basic principle in treating a summary judgment motions that all inferences to be drawn from evidence must be drawn in favor of the non moving party and all disputed factual issues must be resolved in favor of the non-moving party_ *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

Also, plaintiff believes that the court misapprehended the evidence in the several instances presented and relying on that misapprehension misapplied the controlling law and

thus, reached the wrong conclusion. Obviously, had the court properly apprehended the evidence, following the correct principles of law, it could not have held as it did that,

"Summary judgment is granted since all claims are barred under applicable statute of limitations."

The applicable statute of limitation NY CPLR §213(8) provides a six year statute of limitation to be computed from the time the plaintiff or the person under whom he claims discovered the fraud, or could with reasonable diligence have discovered it.

Again the issue of conflicting assertions which called for a resolution by a trier of fact and as such must at summary judgment stage be resolved in favor of the non-moving party was resolved by the court in favor of the defendants. See: *Anderson v. Liberty Lobby Inc;* 477 US 255. *Rodriguez v. City of New York* 72 F3d 1051; *Hayes v. New York City DOC* 84 F.3d 614.

The district court also was resolving conflicting evidence and drawing inferences with regard thereto. Such inference ought to have been drawn in favor of appellant at summary judgment stage. *See Anderson v. Liberty Lobby Inc;* 477 US 255.

Had the court properly addressed the foregoing issues, it would have reached the inescapable conclusion that taking the record as a whole, a rational trier of fact would have found that a genuine issue(s) of material facts exist for trial. *Matsushita Elec Ind Co. V. Zenith Radio Corp* 475 US 574; 106 S. Ct. 1348).

CONCLUSION

Appellant respectfully prays the court to reconsider its decision and reinstate the appeal while appointing counsel to the indigent appellant and allowing the filing of supplemental records in this appeal.

Dated: Brooklyn, New York.
March 22, 2007.

Robert Banushi,
(Pro Se)
46 Parrott Place,
Brooklyn, New York 11228
(718) 238-4320

By: Robert Banushi
ROBERT BANUSHI

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

U.S.C.A. Docket No. 06-4879

CERTIFICATE OF SERVICE

Robert Banushi,

v.

City of New York

I, Robert Banushi, hereby certify under the penalty of perjury that on the 22 day of March, 2007, served by United States Mail or hand delivery the NYC Corporation Counsel Plaintiff Motion for Reconsideration of Order 3/9/07
On the following:

Ann E. Scherzer, Esq.
100 Church Street
New York, NY 10007
Joyce Campbell Priveterre
(212) 788-1277

Robert Banushi
46 Parrott Place
Brooklyn NY 11228
(718) 238-4320

Robert
SIGNATURE

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse at Foley Square
40 Centre Street, New York, NY 10007
Telephone: 212-857-8500

MOTION INFORMATION

Docket Number(s): 06-4879
Motion for: Default Judgment

Banushi v. City of New York

Set forth below precise complete statement of relief sought:
Default Judgment against City of New York

Moving Party: Robert Banushi
Plaintiff
Moving Attorney: Pro Se

Opposing Party: City of New York
Opposing Attorney: Anne E. Scherzer
100 Church Street
New York, NY 10007

Court-Judge/Agency appealed from: EDNY Hon. Charles P. Sifton,

Please check appropriate boxes:

Has consent of opposing counsel:
A. been sought? Yes
B. been obtained? No
Is Oral argument requested? Yes
Has argument date of appeal been set? No

For Emergency Motions, Motions for Stays and Injunctions pending appeal:

Has request for relief been made below?
Has this relief been previously sought by this Court? No
Has service been effected? Yes

Signature of Moving Attorney: [signature] Date: 12-13-07

Order

Before: Hon. Ralph K. Winter, Hon. John M. Walker, Jr., Hon. Chester J. Straub, *Circuit Judges*

IT IS HEREBY ORDERED that Appellant's motion for default judgment and all pending motions are DENIED.

12/10/07
Date

UNITED STATES COURT OF APPEALS FILED DEC 10 2007 SECOND CIRCUIT

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk
by [signature]
Jay Ficke, Administrative Attorney